

ESTTA Tracking number: **ESTTA424483**

Filing date: **08/10/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	9228-4330 Quebec, Inc.
Granted to Date of previous extension	08/10/2011
Address	9600 Meilleur, #1050 Montreal, QC, H2N 2E3 CANADA
Party who filed Extension of time to oppose	9228-4330 QuÃ©bec, Inc. 9228-4330 QuÃ©bec, Inc.
Relationship to party who filed Extension of time to oppose	Opposer's name has not changed - TTAB field will not permit use of the accented "e" in the word "Quebec."

Attorney information	JENNIFER D SILVERMAN ELLENOFF GROSSMAN & SCHOLE LLP 150 E 42ND STREET , 11TH FLOOR NEW YORK, NY 10017 UNITED STATES pto@egsllp.com
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Applicant Information

Application No	85160126	Publication date	04/12/2011
Opposition Filing Date	08/10/2011	Opposition Period Ends	08/10/2011
Applicant	Fortrend Group LLC 2946 Sea Oats Circle Daytona Beach Shores, FL 32118 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2008/09/30 First Use In Commerce: 2008/09/30
All goods and services in the class are opposed, namely: Retail consignment stores featuring clothing, shoes, handbags, jewelry, home goods, bedding and linens, glassware, silverware, and action sports apparel; consignment services, namely, promoting and marketing the goods of others; online retail consignment stores featuring a variety of consumer goods

Grounds for Opposition

Other	Abandonment due to nonuse
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Attachments	PRIVE - Notice of Opposition (00171448).PDF (3 pages)(20994 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jennifer d. silverman/
Name	JENNIFER D SILVERMAN
Date	08/10/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No.: 85/160,126
by Fortrend Group LLC for the mark PRIVÉ
Filed October 25, 2010 and published in the *Official Gazette* on April 12, 2011

9228-4330 Québec, Inc.)	
)	
Opposer,)	
)	Proceeding No. _____
vs.)	
)	
Fortrend Group LLC,)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Opposer, 9228-4330 Québec, Inc. a Quebec corporation having a principal place of business at 9600 Meilleur, #1050, Montreal, QC, Canada 2E3 H2N (“Opposer”) believes that it will be damaged by the registration of the mark shown in Application Serial No. 85/160,126 for the mark PRIVÉ (the “Mark”) and hereby opposes the same under provisions of 15 U.S.C. § 1063.

Facts

1. Opposer is the owner of the domain name www.prive.com upon which Opposer provides online retail services under the mark PRIVÉ.
2. On October 25, 2010, Applicant filed an application to register “PRIVÉ” under Section 1(a) of the Lanham Act for use in connection with the following services in International Class 35: retail consignment store services; consignment services, namely, promoting and marketing the goods of others; Online retail consignment services

featuring a variety of consumer goods” (“the Services”). The application was assigned Serial No. 85/160,126 (the “Application”).

3. In the Application, Applicant claimed first use of the Mark in connection with the Services anywhere at least as early as June 2007. Applicant claimed first use of the Mark in connection with the Services in interstate commerce as early as June 2007.

4. On February 4, 2011, the Examining Attorney issued an Examiner’s Amendment in connection with the Application, amending the identification of Services to: “Retail consignment stores featuring clothing, shoes, handbags, jewelry, home goods, bedding and linens, glassware, silverware, and action sports apparel; consignment services, namely, promoting and marketing the goods of others; online retail consignment stores featuring a variety of consumer goods.”

5. The Application was published for Opposition on April 12, 2011.

6. On May 10, 2011, Opposer filed a request for a 30-day extension of time to oppose the Application, which was granted on May 10, 2011.

7. On June 2, 2011, Opposer requested a further 60-day extension of time to oppose the Application, which was granted on June 6, 2011.

8. Upon information and belief, Applicant has never offered some or all of the Services in connection with the Mark.

9. Upon information and belief, Applicant abandoned use of its Mark in connection with some or all of the services in interstate commerce.

First Claim: Abandonment

10. Upon information and belief, at the time Applicant filed the Application under Section 1(a) of the Lanham Act, Applicant was not using the Mark in connection with some or all of the Services.

11. Because the Mark was not in use in commerce on or prior to the filing date of the Application on some or all of the Services, the Application was void *ab initio* under Section 1(a) of the Lanham Act.

12. By reason of the foregoing, Applicant's nonuse of some or all of the Services has resulted in the Mark losing all capacity to act as a source-identifier for some or all of the Services.

13. By reason of the foregoing, Applicant will be damaged if Serial No. 85/160,126 is granted a registration.

WHEREFORE, Opposer requests that Application Serial No. 85/160,126 be refused from registration in connection with some or all of the Services.

Dated: August 10, 2011

Respectfully submitted,
ELLENOFF GROSSMAN & SCHOLE LLP

By: /Jennifer D. Silverman/
Jennifer D. Silverman
Saryn E. Leibowitz
Attorney of Record
150 East 42nd Street, 11th Floor
New York, NY 10017
T-212-370-1300